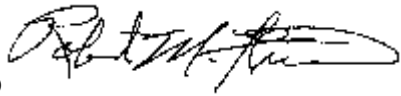


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(Reissue of P02-IV-1 and P02-V-1)

PROGRAM POLICY LETTER NO. P04-IV-1
P04-V-1

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SUBJECT: Reissue - Noise Enforcement Policy

Scope

This policy affects the mining industry and Mine Safety and Health Administration (MSHA) enforcement personnel.

Purpose

This policy supersedes policy currently in the MSHA Program Policy Manual, Volume IV, Parts 56 and 57, Subpart D, Section .5050; Volume V, Part 70, Subpart F, Sections .505, .506(d)(1), .508, .509, and .510; and Volume V, Part 71, Subpart I, Section .800. It also supersedes MSHA Program Policy Letter P00-IV-3/P00-V-2 issued on August 4, 2000, and which is incorporated into this document without change. This policy explains how MSHA will enforce certain provisions of its new health standard for Occupational Noise Exposure.

Policy

Operator Noise Exposure Determination

1. Can I still use the noise monitoring equipment I already have?

Yes, if it meets the criteria listed in section 62.110(b)(2) which states that a miner's dose determination must:

- be made without adjustment for the use of any hearing protector;
- integrate all sound levels over the appropriate range;

- reflect the miner's full work shift;
- use a 90-dB criterion level and a 5-dB exchange rate; and
- use the A-weighting and slow response instrument settings.

Additional information is in MSHA's "A Guide to Conducting Noise Sampling" which is available from the MSHA web page at <http://www.msha.gov>. Copies were also distributed to mine operators.

2. If I determine, without physically sampling, that a miner's noise exposure equals or exceeds the action level (AL), or exceeds the permissible exposure level (PEL), maximum level, or dual hearing protection level (DHPL), am I still required to notify the miner?

Yes. Such notification is required regardless of the source of information that shows an overexposure. For example, you must provide the miner written notification that his or her exposure equals or exceeds the action level (or exceeds other specified levels) based on information from the equipment's manufacturer or other source. You must also notify the miner of the corrective actions you will implement.

3. Do I have to satisfy the "notification" requirement regarding areas of exposure at or above the action level (85 dBA) by posting a sign at the entrance to the mine site listing those areas at or above 85 dBA or do I have to give the notices to each individual miner who is exposed to noise at or above 85 dBA?

Each miner must be provided with individual written notification. This will ensure that all miners are properly notified and informed of any additional precautions necessary to protect their hearing.

4. What is the definition of "miner" for noise monitoring and who does this definition cover?

The noise standard does not include a separate definition of a miner. For purposes of the standard, the definition of "miner" is the same as in Section 3(g) of the Mine Act. It means any individual working in a coal or other mine.

5. A lot of questions have arisen regarding monitoring, and whether or not monitoring is specifically required. Please clarify my responsibilities regarding noise monitoring.

The standard requires that you establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with all aspects of the standard. This means that whatever system you establish must keep you aware of when a miner is overexposed to sound levels, whether your exposure determinations are based on information from the manufacturer, sampling conducted by an insurance carrier, or by MSHA.

6. Will MSHA issue a citation for failure to notify miners of an overexposure to noise if I conducted the monitoring prior to September 13, 2000? (Example: I conducted sampling or monitoring in December 1999 and didn't notify the miners of the results until September 2000).

You may use the monitoring results for compliance with Section 62.110 of the noise standard. However, within 15 calendar days following the effective date of September 13, 2000, you must notify the miners in writing of their exposure determinations and any corrective actions being taken.

7. If a miner's noise exposure is assessed using a personal noise dosimeter and does not equal or exceed the action level, how often does he or she have to be monitored?

The noise monitoring provision is performance oriented and does not specify the frequency of monitoring. The standard does require you to establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with the standard.

8. When initially assessing miners' noise exposures under Section 62.110, may I use one miner's sampling results as representative of multiple miners who perform the same tasks on the same or another shift, such as operating similar equipment?

Yes, depending on the circumstances, you may monitor areas of the mine or representative job tasks in order to obtain sufficient information to determine compliance with the standard. Monitoring a representative number of the miners operating the same type of equipment is acceptable. However, the monitoring results for one miner operating a piece of equipment may not be consistent with noise exposures for other miners operating similar, but not the same, equipment.

9. If I voluntarily establish a hearing conservation program and enroll all miners at my mine, will I have to monitor for noise exposure at the action level?

If you can determine that a miner's noise exposure is at or above the action level without monitoring and you notify the miner according to the requirements of 62.110, then specific sampling for action level noise exposure is not necessary. However, notifying the affected miners that their exposures are at or above the action level is still required.

10. Can I cover the requirement for notifying a miner of exposure to excessive noise within 15 days by posting the notice on the bulletin board? How should I ensure that a miner received a copy of the results? Can I require the miner to date, time, and initial the document?

Section 62.110(d) specifically requires that you notify each miner of any overexposure to noise in writing within 15 calendar days. Posting the notification on a bulletin board will not meet this requirement. How you ensure that the miner received the notification is not covered by the standard.

11. How does MSHA expect mine operators to control the noise exposure of maintenance workers or examiners who have varying tasks and do not work at set locations, but travel throughout the mine, plant or mill?

You must use feasible engineering and administrative controls to reduce the miners' exposures to allowable levels. If such controls do not exist or do not reduce the miners' noise exposures to the PEL, MSHA will evaluate the circumstances for possible issuance of a "P" code. MSHA's experience shows that administrative controls work best in this situation, but you have the choice of using either engineering or administrative controls, or a combination of both, to reduce miners' noise exposures.

12. Does this standard eliminate the need for me to have qualified people conduct noise monitoring?

Part 62 does not require you to have persons "qualified" by MSHA to conduct noise monitoring. However, persons conducting noise monitoring must be knowledgeable of how to measure noise exposures.

13. Will MSHA continue to qualify persons to conduct noise monitoring?

No, but MSHA will continue to conduct noise sampling courses for the industry.

14. What error factors will MSHA use for enforcing the four exposure levels (AL, PEL, DHPL, and maximum level)?

MSHA will continue to use a 2 dBA error factor. MSHA will issue citations for the following noise exposure doses: 66% for AL, 132% for PEL, and 1056% for DHPL.

Maximum Level

1. Can miners be exposed to sound levels exceeding the maximum level of 115 dBA for any period of time? Will MSHA permit any duration of exposure above 115 dBA before citing a mine operator? When will MSHA cite operators? Is the maximum level a 15-minute average of exposure? Will impact/impulse noise be considered as part of the maximum level?

MSHA will continue to enforce the maximum level in the same manner that it was enforced under its previous noise standards. In most cases MSHA noise exposure determinations will be based on full-shift surveys using a personal noise dosimeter. MSHA may issue a citation if sound levels exceed 117 dBA (115 dBA maximum level + 2 dBA error factor) for at least 30 consecutive seconds. When a miner is exposed to 117 dBA for more than 15 minutes, the 90 dBA PEL is also exceeded. In such cases, the Agency will cite operators for exceeding the 90 dBA PEL rather than for exceeding the maximum level.

The new noise standard does not include a separate standard for impact/impulse noise. MSHA stated in the preamble to the standard that impact/impulse noise will be integrated along with continuous noise in determining a miner's exposure to the maximum level as well as to all other required levels. Sampling of an individual miner's exposure in the hearing zone will be conducted with a noise dosimeter and a sound level meter using the A-weighting slow response setting for determining compliance with the maximum level.

2. What am I required to do if I exceed the maximum level?

As with exposure exceeding the 90 dBA PEL, if you exceed the maximum level you are required to use all feasible engineering and administrative controls, provide and ensure the use of hearing protection, enroll affected miners in an HCP, post any administrative controls that are being used on the mine bulletin board, and provide copies of those administrative controls to affected miners. All requirements of § 62.130 continue to apply.

Noise Controls

1. Where I have multiple pieces of the same type of equipment, how will MSHA address the other pieces while the first piece is being equipped with noise controls?

Compliance and feasibility are determined on a case-by-case basis. MSHA intends to give operators a reasonable amount of time to put controls on equipment. In some cases this may require a prolonged period of time, while in other instances it may not.

2. If a doctor fits a miner with hearing protection will this be permitted in lieu of installing expensive noise controls?

No. Personal hearing protection is not considered a noise control.

3. What if I have changed administrative controls and MSHA determines a miner is being overexposed?

If MSHA sampling shows that a miner is overexposed to noise and the administrative and/or engineering controls you have installed are not effective, MSHA will determine if additional feasible controls are available that would be effective. If so, a citation will be issued.

4. Will I be issued a 104(b) order for failure to install engineering and administrative controls which MSHA believes are feasible?

MSHA will first issue a 104(a) citation for failure to install feasible controls when required to do so under Section 62.130. If during a compliance inspection, MSHA finds that you failed to abate the citation within the specified time period, then MSHA may issue a 104(b) order.

5. What will MSHA do in a situation where I have determined that a miner is overexposed to noise and I am in the process of installing controls?

MSHA will evaluate your efforts to attain compliance and a citation may not be warranted.

6. Will MSHA allow me to bring onto mine property older equipment that causes a miner's noise exposure to exceed the PEL?

The final noise standard does not prevent you from bringing any equipment onto your property. However, the noise standard does require you to use both feasible engineering and administrative controls, if necessary, to reduce a miner's exposure to the PEL.

7. How will MSHA address labor/management agreements that affect the use of administrative controls?

MSHA policy regarding labor/management agreements will not be affected by the new noise standard.

Feasibility of Engineering and Administrative Controls

1. Will MSHA continue to apply its metal and nonmetal noise decisions as decided by the Federal Mine Safety and Health Review Commission as the basis for how it will determine feasibility of engineering controls?

Yes, the noise decisions will continue to be applicable to feasibility of controls.

2. In enforcement, how does MSHA apply the noise case factors?

Consistent with the Commission decisions, in enforcing the noise standard, MSHA will continue to consider three factors in determining whether engineering controls are feasible at a particular mine. These factors are: (a) the nature and extent of the exposure; (b) the demonstrated effectiveness of available technology; and (c) whether the committed resources are wholly out of proportion to the expected results.

2(a) The nature and extent of the exposure.

In considering the nature and extent of exposure as a factor in determining whether controls are feasible, MSHA will consider the following components: source(s) of noise, level (dose), and duration of exposure. For example, the exposure of miners, such as percussive drillers or bulldozer operators, to high levels of noise on a continuous or daily basis would require the application of feasible controls.

2(b) The demonstrated effectiveness of available technology.

MSHA intends to continue its longstanding policy currently in effect for metal and nonmetal mine operators of determining what constitutes an effective control, *i.e.*, where a control or a combination of controls could achieve at least a 3 dBA reduction in noise exposure. This represents a 50% reduction in sound energy. Where a single engineering control does not provide at least a 3 dBA reduction in a miner's noise exposure, you must consider the expected level of reduction from a combination of technologically available controls. We have many years of experience in achieving significant reduction in sound levels on most pieces of equipment in metal and nonmetal mines. Working together with metal and nonmetal operators and equipment manufacturers, MSHA has made great strides in significantly reducing noise exposure through the use of available noise controls.

MSHA has also gathered information on effective noise controls for coal mining equipment. The Office of Technical Support works closely with the inspectorate in providing information on effective noise controls. When MSHA published the rule on September 13, 1999, the Assistant Secretary for MSHA sent a letter to all mine operators offering assistance to conduct noise evaluations and provide advice on noise controls. MSHA will continue to be available to assist operators and miners and has made available a comprehensive list of equipment manufacturers, suppliers of acoustical material and links to other Internet sites where lists of noise consultants may be obtained.

2(c) Whether the committed resources are wholly out of proportion to the expected results.

In considering this factor, MSHA will determine whether the cost of abatement is out of proportion to the expected reduction in noise exposure. If a control is extremely costly for the operator but the expected reduction in noise exposure is minimal, MSHA may determine that it is not economically feasible for you to install the control. For example, MSHA will not require rod and ball mills to be enclosed at costs that could reach hundreds of thousands of dollars. However, MSHA may require that control rooms and other practical controls be implemented to reduce noise exposure.

3(a). With respect to determining feasibility of engineering and administrative controls, does the “nature and extent of the overexposure” mean that controls which would be deemed feasible where noise exposures are 105 dBA might not be deemed feasible where the noise exposure is only 95 dBA? Or, does it mean that the feasibility of engineering controls may depend on how many miners are overexposed?

Engineering and administrative controls that are feasible to reduce a miner’s noise exposure at a very high level will be considered feasible at lower levels above the PEL as well. For example, controls that are determined to be feasible where noise exposures are 105 dBA will also be considered feasible where noise exposures are 95 dBA. Because the noise standard is based on each miner’s personal exposure to noise, feasibility does not depend on the number of miners overexposed.

3(b). Does the phrase “the demonstrated effectiveness of available technology” mean anything more than that a control or combination of controls must achieve at least a 3 dBA noise reduction in order to be deemed technologically feasible?

The phrase means that a single engineering control or a combination of controls which is likely to achieve at least a 3 dBA reduction in a miner’s noise exposure is technologically feasible. In addition, a control or combination of controls that brings noise exposure down to compliance levels, but does not achieve a 3 dBA reduction, may also be considered feasible. MSHA will, however, consider any adverse effects that the controls may have on the health and safety of the miner.

3(c). Does MSHA have some threshold of proportionality beyond which a control is deemed infeasible? Is there a value or range of values to guide the determination of whether costs are

“wholly out of proportion to the expected results”? Does it depend on how many miners the reduction applies to?

Although neither MSHA nor the Commission has placed a value on the cost of a control per decibel of reduction or the number of miners affected, MSHA will not require an irrational expenditure to achieve a minimal noise reduction.

4. How will MSHA determine the feasibility of administrative controls?

In determining the feasibility of administrative controls, MSHA will consider the same three factors that the Commission outlined for determining the feasibility of engineering controls, that is, nature and extent of the exposure, demonstrated effectiveness of available technology, and whether resources are wholly out of proportion to expected results. For example, MSHA will not require you to hire additional workers in order to “exhaust” all feasible administrative controls.

5. Will MSHA require an operator to use feasible engineering controls before implementing administrative controls?

No. A mine operator can choose to use either feasible engineering controls or feasible administrative controls, or a combination of both, as long as the controls reduce the miner’s noise exposures to the PEL. When administrative controls are used, the mine operator must post the procedures for the controls and provide a copy to the affected miners.

“P” Codes

1(a). How does MSHA’s “P” code enforcement policy work?

If an MSHA inspector finds that a miner’s noise exposure at a facility exceeds the PEL despite the fact that the mine operator is using all feasible engineering and administrative controls, no citation will be issued as long as the mine operator has posted and provided affected miners with copies of any administrative controls being used and is complying with the requirements of Section 62.150, which includes enrollment in a hearing conservation program, and Section 62.160 which requires the use of hearing protectors. In these circumstances, the mine operator will be in compliance with Section 62.130(a) and (b) even though miners at the operation are exposed above the PEL, and a “P” code will be established for the mine. The “P” code is an administrative device that allows MSHA to track situations where feasible engineering and administrative controls do not reduce miners’ noise exposure to the PEL.

MSHA regularly reviews and re-evaluates “P” code situations to see whether feasibility conditions have changed. If new technology becomes available that could affect outstanding “P” code feasibility determinations, MSHA will notify the mining community of the new technology by posting information about it on the MSHA web site. Thereafter, the local MSHA inspector will notify individual mine operators about the new technology if their mines have received a “P” code for which the new technology

is relevant. Any failure by MSHA to notify, however, does not relieve the mine operators from their responsibility to implement feasible controls whenever those controls become available.

MSHA will make a case-by-case determination of whether implementation of the new technology is feasible for each individual mine that currently has "P" code status due to a noise source to which the new technology applies. There may be reasons why the new technology may not be deemed feasible for a particular mine even though it is effective elsewhere. For example, because of the nature of the operation and the miners' activities, the new engineering control may not be capable of achieving a 3 dBA reduction in the miners' noise exposure at that particular facility, even if it has been shown to reduce the noise level from a particular piece of equipment by 3 dBA.

If MSHA deems the new technology to be feasible for the particular mine, the operator will be so informed and expected to implement it within a reasonable period of time to be determined by MSHA on a case-by-case basis. If the operator does not do so, the "P" code designation will be terminated, and a citation will be issued for failing to utilize all feasible controls to achieve the PEL. If the mine operator installs the new technology and still does not achieve the PEL, the "P" code would be continued, and a citation would not be issued. Of course, the "P" code would terminate without the issuance of a citation if the mine operator reduces miners' exposures to the PEL through the use of any combination of engineering and/or administrative controls, even if they differ from the new technology identified by MSHA.

1(b). Will existing "P" code determinations in the metal/non-metal sector be recognized under the new Standard?

Yes. A mine operation that is subject to a "P" code determination under the old metal and nonmetal noise standard will continue to be subject to the "P" code determination when the new standard takes effect. The determination that engineering and administrative controls were not feasible under the old metal nonmetal standard will continue when the new standard takes effect on September 13, 2000. Thus, if you were operating under a "P" code determination before September 13, 2000, you will continue to operate under the "P" code determination after that date and will not be cited for failing to achieve the PEL -- although, as indicated in the answer to the previous question, MSHA regularly reviews and re-evaluates "P" code situations and may conclude in the future that new feasible technology has become available. Of course, you also must comply with the other requirements of the new standard -- including determining the noise exposures of the miners, enrolling those exposed at or above the action level in a Hearing Conservation Program, and providing and ensuring that hearing protectors are worn by miners whose exposures exceed the PEL whenever they are exposed to a noise source that is responsible for their overexposure.

2. How does MSHA expect that new technology will be developed?

MSHA's Office of Technical Support regularly reviews research on new control technology. In addition, MSHA expects the mining industry and equipment manufacturers to work together to develop new or improved noise reduction technology. MSHA will identify and disseminate information about new controls as we become aware of them.

Hearing Conservation Programs

1. Can I establish a Hearing Conservation Program (HCP), conduct training, or conduct audiometric testing before September 13, 2000?

If you have enrolled miners in an HCP, trained the miners, and conducted audiometric testing according to Part 62, MSHA will accept both the training and testing. However, the annual training date and date for annual audiometric testing will be based on the standard's September 13, 2000 effective date, regardless of when you established the HCP, conducted training or conducted audiometric testing. In other words, annual retraining or audiometric testing will be due within a year of the effective date even if you conducted your HCP training or had an audiometric test conducted in July 2000.

2. Once a miner is enrolled in a hearing conservation program, is there a procedure for removing him or her from the program?

After a miner is enrolled in an HCP, the miner's noise exposure has been reduced to below the AL, and all requirements of Section 62.150 related to the HCP have been met, the miner can be removed from the program.

3. How will MSHA evaluate the effectiveness of my HCP?

Effectiveness will be based on factors such as the incidence of miners experiencing a Standard Threshold Shift (STS) or hearing loss as a result of noise exposures while working at the mine.

Personal Hearing Protection

1. How will MSHA enforce the requirements for hearing protectors, and do the requirements for mandatory use of hearing protectors or dual hearing protectors require a miner to wear the hearing protector(s) continually throughout the entire shift?

If the miner is exposed to sound levels at or above a TWA_8 of 85 dBA (the action level) and up to a TWA_8 of 90 dBA (the PEL), the use of hearing protectors is optional. The use of hearing protectors is required when a miner is exposed to noise at or above the action level and the miner has incurred a standard threshold shift or more than 6 months will pass before the miner can take a baseline audiogram. If exposure is above a TWA_8 of 90 dBA (the PEL), the operator must first use any combination of engineering and administrative controls that are feasible to lower the miner's exposure to a TWA_8 of 90 dBA. In addition to installation of feasible engineering and administrative controls, hearing protectors must be worn by a miner until the miner's exposure is reduced to the PEL, so long as the equipment responsible for the overexposure is operating. If exposure

is above a TWA_8 of 105 dBA, the operator must also provide and ensure the use of dual hearing protectors. If a miner is not wearing the required hearing protector(s) in these circumstances, MSHA will issue a citation to the mine operator.

MSHA notes that hearing protectors do not necessarily need to be worn for an entire shift. For example, MSHA will not require hearing protectors to be worn in quiet places, or when the miner is no longer exposed to the excessive noise source(s) when the equipment is not running. Under those circumstances, MSHA will not issue a citation to the mine operator when a miner is not wearing a hearing protector.

This answer applies to dual hearing protection as well.

2. Must hearing protection devices have a noise reduction rating (NRR) to be acceptable?

Either an NRR rating or another scientifically accepted indicator of noise reduction is required.

3. Do miners who wear hearing aids also have to wear Hearing Protection Devices (HPDs)?

Yes. Hearing aids are not accepted as HPDs. MSHA's definition of a hearing protection device is defined as any device or material, capable of being worn on the head or in the ear canal that is sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear. Not all devices or materials that are inserted in or that cover the ear to reduce the noise exposure, for example a hearing aid or cotton, meet the definition of a hearing protector under the standard.

4. Will deaf and other hearing impaired miners have to wear HPDs and do I have to reduce their noise exposure?

Yes, all provisions of the noise standard apply.

5. Will I be permitted to use noise canceling ear muffs?

You will be permitted to use noise canceling ear muffs for hearing protection, if they have a Noise Reduction Rating or another scientifically accepted indicator of noise reduction, but you cannot use them as an engineering control. In addition, they must be permissible to be used in the last open crosscut in underground coal mines and in certain gassy metal and nonmetal mines.

6. What action will MSHA take if a miner for whom I provided hearing protection under my HCP is observed not wearing the HPD where the noise exposure exceeds the PEL?

You have the responsibility to make certain that required personal hearing protection is worn. If MSHA determines that a miner is overexposed to noise in this circumstance a citation will be issued.

7. Will a miner have to wear dual hearing protection if he or she leaves the area where dual hearing protection is required?

No.

8. If a miner does not participate in audiometric testing, does he or she have to wear hearing protection if his or her exposure is between 85 dBA and 90 dBA?

No. In this circumstance it would not be possible to determine if the person had a standard threshold shift. However, if the operator became aware that the individual had a standard threshold shift, for example, a letter from the miner's personal doctor, the miner must wear hearing protection.

9. Is a miner required to wear dual hearing protection if he or she has a medical condition (for example, ear infection) that prevents him or her from wearing personal hearing protectors?

Section 62.140 of the standard requires a miner to wear dual hearing protection when working in an environment where dual hearing protection is required. For miners with a medical condition such as an ear infection, Section 62.160(a)(5) requires that the mine operator allow the miner to choose a different hearing protector.

10. What about miners who wear eyeglasses and are required to wear ear muff type hearing protection?

The standard does not exempt from its requirements miners who wear eyeglasses. MSHA believes that the proper selection and combination of hearing protectors should alleviate this concern. For example, newer models of ear muffs, which are readily available, are specifically designed to be used with safety glasses. Other models which were specifically designed for use with hard hats or welding shields are also readily available.

11. Are personal hearing protectors required for anyone traveling or working in areas above 90 dBA or just for those employees who are known to be overexposed?

All miners must wear hearing protection when the miner's full-shift noise dose exceeds the PEL or Dual Hearing Protection Level (DHPL); when the maximum level exposure exceeds 117 dBA; or, when the full-shift noise dose is between the AL and PEL and the miner has incurred an STS or it will be longer than six months to obtain a baseline audiogram. When such exposures occur, miners must wear their hearing protection whenever they are exposed to sound levels that could contribute to their dose (i.e., greater than or equal to 80 dBA for the AL, and greater than or equal to 90 dBA for the PEL and DHPL).

Audiometric Testing

1. How will MSHA enforce the 30-day time frame in Section 62.172(a)(4) in which the operator must obtain the results of hearing data from testing firms?

Although MSHA expects mine operators to comply with the 30-day time frame, if the operator can demonstrate that compliance was beyond its reasonable control, MSHA may allow the operator more time to obtain the audiometric test results. MSHA will make this determination on a case-by-case basis. Compliance is not beyond the operator's control when the physician, audiologist, or qualified technician is directly employed by the mine operator.

2. What factors should a physician or audiologist consider when making a determination that hearing loss is neither work-related nor aggravated by occupational noise exposure under the reporting requirements for reportable hearing loss?

Mine operators should inform physicians and audiologists to routinely ask about a miner's employment history and both occupational and non-occupational noise exposure in order to make a well-informed diagnosis. If there is evidence of non-occupational causes for the hearing loss, the physician or audiologist should look beyond the work place for the cause of the hearing loss. Unless the physician or audiologist can determine that the miner's hearing loss is neither work-related nor aggravated by occupational noise exposure, the mine operator must report the reportable hearing loss.

3. Will I have to make individual contact with miners about voluntary audiograms once I have implemented a hearing conservation program?

You must inform miners that audiograms are available. The standard does not specify how the miners are to be informed. You must offer miners the opportunity for audiometric testing of the miner's hearing sensitivity for the purpose of establishing a valid baseline audiogram to compare with subsequent annual audiograms. Posting of audiometric test dates and locations in areas where all affected miners can see them will be acceptable.

4. Can I use existing baseline audiograms?

Yes, you may use a current audiogram as a baseline audiogram for purposes of complying with Section 62.170(a) of the standard if it meets the test procedures specified in Section 62.171.

5 Can I wait a full year when using mobile test vans to get audiometric testing completed?

Section 62.170(a)(1) of the standard requires you to offer audiometric testing to miners within six months of their enrollment in your HCP. If a mobile test van is used, you are allowed up to 12 months from the miner's enrollment in your HCP to offer audiometric testing. However, you should schedule baseline audiometric testing as soon as possible after miners are enrolled in your HCP. Up to 12 months is allowed for those situations where getting access to a mobile testing facility is not possible during the initial six months.

6. Is a quiet period required prior to audiometric tests other than the baseline?

No, it is the mine operator's choice whether to implement a quiet period for tests other than the original baseline.

7. Does an audiologist or physician have to be present in the mobile van during audiograms?

No, but he or she must be directing or supervising the work of the qualified technician.

8. Must a new baseline be established for a miner who was previously enrolled in an HCP, was subsequently laid off from work for more than 12 months, and is called back to work at the same mine?

No, you may either use the prior baseline audiogram or establish a new baseline.

9. If a miner leaves my mine because I close the mine and takes a job at a different mine, can the new mine operator use the miner's last audiometric test as a baseline for that miner?

Section 62.190(c)(2) requires that a successor mine operator use the baseline audiogram, or revised baseline audiogram, as appropriate, obtained by the original mine operator to determine the existence of a standard threshold shift or reportable hearing loss. If the second mine where the miner is employed is owned by the same company, the operator of that mine must use the existing audiometric test record. If the mine is owned by a different company, the operator may choose to use the miner's existing audiometric test record if it meets the test procedures in Section 62.171, or the operator can establish a new baseline.

10. If an employee declined an audiogram when initially offered, but then changes his or her mind at a later date, do I have to provide the audiogram?

Yes, if the miner is still enrolled in a hearing conservation program. You would then have six months (up to 12 months if a mobile test van is used) from the date the miner opted back into the audiometric testing program to have the test conducted.

11. Must an audiogram of a miner who normally wears a hearing aid be conducted with or without the hearing aid?

It must be conducted without the hearing aid. The audiogram must determine the miner's current hearing ability without the use of the hearing aid.

12. Are audiograms conducted pursuant to OSHA's Hearing Conservation Amendment fully acceptable under MSHA's new standard?

Yes, they are.

13. Who pays for an evaluation or referral when a miner is referred to a physician for an evaluation and/or treatment due to a medical pathology of the ear prior to the mandatory audiogram being given, but the miner is in a Hearing Conservation Program?

If the physician believes that the medical pathology is due to workplace noise exposure or the wearing of hearing protectors while at the mine, then the mine operator has to pay for the evaluation or referral. On the other hand, if the physician believes that the medical pathology is not due to workplace noise exposure or the wearing of hearing protectors while at the mine, then the mine operator is not responsible for paying for the evaluation or referral. Whether the mine operator is responsible for paying for the evaluation or referral should be made clear to the miner.

Audiometric Test Records

1. I own multiple mines under the same company name and each mine has a separate MSHA ID number. If I close one mine and transfer the miners to a different mine within my company, what happens to the audiometric test records?

If the mine to which you transferred the miners is owned by the same company, you must use the existing audiometric test records. In addition, you must maintain the audiometric test records for the duration of the affected miner's employment, plus at least six months.

2. What if a miner quits my mine and returns five months later requesting copies of his or her records?

You must provide him or her a copy of the audiometric test records. Section 62.171(c) requires that you retain audiometric test records for the duration of the affected miner's employment, plus at least six months. In addition, Section 62.190(a)(3) gives the former miners access to records which indicate their own exposure.

3. What if a former miner has not been employed at my mine for the past eight months, and he or she requests a copy of his or her audiometric test records from me?

You are only required to maintain audiometric test records for the duration of the affected miner's employment, plus at least six months. However, if you still have the record, it should be provided to the miner upon request.

Hearing Loss

1. A miner's audiometric records for a company show no hearing loss. The miner quits the mine and goes to work for another company and later takes an audiometric test with the new company which shows a reportable hearing loss. What are the previous company's responsibilities under Part 62?

The previous company does not have any responsibilities regarding this miner's hearing loss under Part 62. However, the previous company may have responsibilities for workers' compensation claims under State law.

2. The standard defines a reportable hearing loss as a 25 dB shift from the employee's baseline audiogram or revised baseline audiogram. What happens if a worker has successive 10-dB shifts with revision of the baseline? Is it possible that a 25 dB shift would never be identified? Could a worker have progressive hearing loss well above 25 dB and this not be a reportable event?.

The definition of "reportable hearing loss" specifies that only an original baseline or a revised baseline audiogram which shows a significant improvement in hearing are to be used for reporting purposes.

3. How should I deal with hearing loss due to aging?

Tables 62-3 and 62-4 of the standard include correction factors for both males and females. However, any such adjustment must be made to both the baseline and annual audiograms.

4. Must I still report hearing loss diagnosed by a physician or for which compensation has been awarded?

Yes, it is required to be reported under 30 CFR Part 50.

5. When and how soon will I have to report a hearing loss under 30 CFR Part 50?

All hearing loss, including hearing loss diagnosed by a physician, or for which compensation has been awarded is reportable under Part 50 within 10 working days from when the operator becomes aware of the hearing loss, diagnosis of hearing loss, or award of compensation.

Training

1. Must I pay miners for the training required once they are enrolled in a hearing conservation program?

Yes.

2. I plan to have my audiometric testing service provider conduct the required training. Will MSHA accept their certification that the training was conducted?

No. Mine operators must certify that the training was provided under Section 62.180(b). However, the audiometric test provider can conduct the training.

3. Will MSHA develop a generic training program to assist me in complying with the requirements of a hearing conservation program?

Yes. MSHA is developing a video that, when shown to miners enrolled in an HCP will meet the training requirements of Section 62.180. Once completed, the video will be made available to the industry through the National Mine Health and Safety Academy.

4. Will MSHA provide me with a guide to set up a noise training program?

In addition to a training video, training materials related to noise are available through the National Mine Health and Safety Academy and from various sources including the National Institute for Occupational Safety and Health and through the Internet.

MSHA's web site at <http://www.msha.gov> has a section on noise that contains links to several organizations that can provide useful information on evaluating noise exposures, controlling sound levels, and hearing testing and conservation including:

- National Institute for Occupational Safety and Health
- Occupational Safety and Health Administration
- American Conference of Governmental Industrial Hygienists
- American Industrial Hygiene Association
- American Speech-Language-Hearing Association
- Council for Accreditation in Occupational Hearing Conservation
- National Council of Acoustical Consultants
- National Hearing Conservation Association

5. Can any or all of the Section 62.180 noise training requirements be included with 30 CFR Parts 46 and 48 training requirements?

Yes, as long as all required elements of Parts 46, 48, and 62 are covered.

6. How will MSHA expect me to make audiometric testing records available to MSHA personnel?

It was not MSHA's intent that records be provided immediately to authorized representatives of the Secretaries of Labor and Health and Human Services. MSHA agrees that providing immediate access to records might be too restrictive or burdensome on the industry. Following current practice, MSHA intends that authorized representatives of the Secretaries have access to records within a reasonable amount of time that does not hinder the authorized representatives' conduct of business. In most cases MSHA expects that this will be no longer than one business day.

7. What is MSHA's definition of a "successor operator?"

A successor operator is an operator who has taken over a mine from another company. The transfer of HCP, audiometric testing and training records applies.

MSHA Monitoring

1. Will MSHA continue to perform noise monitoring under the new standard?

Yes. For example, during mandatory mine inspections and technical noise investigations, MSHA will continue to evaluate miners' noise exposures to ensure the operator's

compliance with the noise standard. Whether an operator's system of monitoring is effective will be based on how well the monitoring system protects miners. MSHA intends to evaluate the effectiveness of a mine operator's monitoring system by how well the system achieves the specified goals of the standard. Overexposure may indicate deficiencies in the mine operator's noise monitoring system and may result in close scrutiny of the program by MSHA.

2. How will MSHA measure the nature and extent of potential overexposure to noise at a particular mining operation?

MSHA will measure the nature and extent of noise exposure at a particular mine using a personal noise dosimeter. Personal noise dosimeters are designed to measure a miner's personal noise exposure and shall be worn over the course of a full shift to get an accurate picture of the employee's noise exposure. Personal noise dosimeter results can show whether or not a miner's noise exposure exceeds the PEL.

Citations and Orders

1(a). If noise is "emanating" from one piece of equipment and the result is overexposure to more than one miner, will MSHA issue separate citations for each miner?

If there is a single noise source causing an overexposure to numerous miners and its control would bring all exposed miners into compliance, then only one citation will be issued, provided all of the other requirements of the standard are met. The total number of miners overexposed will be indicated on a single citation. For example, one citation will be issued if an air track drill exposes both the driller and the drill helper to similar noise exposures above the PEL with the number of affected miners indicated on the citation.

1(b). How will MSHA address situations where multiple machines or pieces of equipment are the source of the overexposure?

The operator will be cited separately for each overexposed miner. For example, at mills and preparation plants, where there are multiple noise sources, such as chutes, crushers, and screens, separate citations will be issued for each miner found to be overexposed. Likewise, at surface and underground mines where there are multiple noise sources such as dozers, loaders, haul trucks, etc., separate citations will be issued for each miner found to be overexposed.

2. There are many provisions of the standard, which, if violated, could result in a citation. (Example: I used the wrong threshold setting on a miner's personal noise dosimeter when monitoring his/her exposure.) Will MSHA cite violations of such provisions?

For each miner found overexposed, a single citation of either 62.120, 62.130, or 62.140 will be issued with all other Part 62 provisions violated grouped as part of the citation. For example, if a miner's exposure exceeds the PEL and you failed to provide training and offer audiometric testing, a single citation of 62.130 will be issued and provisions of

the HCP that were violated will be stated in the body of the citation. Where a citation is pending abatement by either retiring or replacing a piece of equipment that is the source of noise, failure to maintain any controls implemented or to comply with requirements of an HCP will result in a 104(b) order or a 104(a) citation. Where a mine has been issued a “P” code, failure to comply with any of the conditions of the “P” code, including provisions of an HCP, will result in a separate citation for each miner affected. For example, if three miners exposed to the noise generated from a single piece of equipment that is covered by a “P” code are observed not wearing hearing protection, three separate citations will be issued.

3. How will MSHA determine if an overexposure under the new standard is a significant and substantial (S&S) violation?

If miners are overexposed to the PEL, a citation will not be S&S if you provide miners with proper hearing protection and it is being worn. However, a citation will be S&S if proper hearing protection is not worn by miners.

Background

On September 13, 1999, MSHA promulgated its new noise standard to enhance health protection for miners from occupational noise-induced hearing loss (64 FR 49548). The noise standard became effective on September 13, 2000.

Authority

Federal Mine Safety and Health Act of 1977; 30 CFR Part 62.

Filing Instructions

A copy of this policy letter should be filed behind the tab “Program Policy Letters” at the end of Volume IV (M&NM Mines) and Volume V (Coal Mines) of the MSHA Program Policy Manual.

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Internet Availability

This policy letter may be viewed on the Internet by accessing MSHA’s home page (<http://www.msha.gov>) and then choosing Rules and Regs, and Compliance Assistance Information.

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